IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1359 of 2005
With
CIVIL APPLICATION No. 10487 of 2007
In SPECIAL CIVIL APPLICATION No. 1359 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DALSUKHBHAI SAVJIBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT THROUGH K.C.KAPOOR IAS OR SUCCESSOR & 3 - Respondent(s)

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Appearance :
MR BM MANGUKIYA for Petitioner(s) : 1,
MS KOTECHA, ASST GOVERNMENT PLEADER for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 09/08/2007

ORAL JUDGMENT

1. The petitioner has under Article 226 of the

Constitution of India challenged the order dated 24.01.05 passed by respondent no.3 in exercise of power under sub-article (2) of Article 311 of the Constitution of India dismissing the petitioner from services on the petitioner's conviction in Special Case No. (ACB) No. 01/2001 for the offence punishable under sections 7 and 13(2) of the Prevention of Corruption Act, 1988 and being sentenced to undergo imprisonment for a period of 3-1/2 years on each count and payment of fine of Rs. 5000/- on each count and in default thereof to further undergo imprisonment of a period of nine months on each count on the ground that the said order ought not to have been passed when this Court(Coram: D.N Patel, J.) vide order dated 29.12.04 suspended the conviction in Criminal Misc. Application No. 12.11.2004 in Criminal Appeal No. 2197/04.

2. The facts in brief deserve to be stated as under:

2.1 The petitioner alongwith other co-accused was convicted by the concerned Special Judge in ACB Case No. 01/2004 on 18.12.04 for the offence punishable under sections 7 and 13(2) of the Prevention of Corruption Act, 1988 and was sentenced to undergo imprisonment for a period of 3-1/2 years on each count and also ordered to pay fine of Rs. 5000/- on each count and in default there of to further undergo imprisonment for a period of nine

months. The petitioner challenged the said order of conviction by preferring Criminal Appeal being Criminal Appeal No. 2197/04 under section 389 of the Criminal Procedure Code. The petitioner also preferred Criminal Misc. Application No. 11294/04 in Criminal Appeal No. 2197/04 for enlarging him on bail pending appeal. This Court(Coram : D.N Patel, J.) vide order dated 21.12.04 suspended the sentence and the petitioner was enlarged on bail. As the petitioner was apprehending his termination on account of his conviction approached this Court again by preferring Criminal Misc. Application No. 12117 of 2004 praying suspension of his conviction pending appeal. This Court (Coram: D.N Patel. J.) vide order dated 29.12.04 passed the order suspending the conviction of the petitioner in Criminal Case (ACB) No. 1/04 dated 18.12.04.

2.2 The petitioner communicated this order under his letter dated 31.12.04 to the respondent as it is stated by the respondent no.3 passed an order of termination of the services of the petitioner in exercise of power under sub-article 2 of Article 311 of the Constitution of India after taking note of the fact that the conviction order though suspended the judgement convicting him as not been kept in abeyance by the Court in appeal. The judgement holding the petitioner guilty was treated to have been in operation and therefore the respondent no.3 terminated

the services of the petitioner on that ground. This order is impugned in the Special Civil Application No. 1359/05.

2.3 This Court(Coram: R.M Doshit, J.) on 19.09.05 admitted the petition by issuing Rule and onserved that the petition shall be notified for final hearing after the Criminal Appeal No. 2197/04 is heard and finally disposed of. The Criminal Appeal No. 2199/04 in respect of other co-accused came to be heard and disposed of by this Court (Coram: C.K Buch, J.) vide CAV judgement dated 28.02.07 wherein the court accepted the appeal and quashed and set aside the order of conviction dated 18.12.04 made by the Special Judge in Special Case (ACB) No. 1/04.

2.4 The petitioner therefore preferred Civil Application being C.A No. 3788/07 in Special Civil Application No. 1359/07 praying fixing early date of hearing of the man matter in view of the fact that the Criminal Appeal has been allowed and the order of conviction has been set aside. This Court (Coram : D.H Waghela, J.) vide order dated 14.06.07 allowed the same and fixed the main matter being Special Civil Application No. 1359/05 for final hearing on 28.06.07. The petitioner also preferred Civil Application being C.A No. 10487/07 in Special Civil Application No. 1359/05 praying that as the main matter

is not being heard the prayer made in SCA No. 1359/05 be granted by way of interim order as the conviction has been set aside which was the basis of his dismissal. Both the matters being the Civil Application No. 10487 of 2007 and Special Civil Application No. 1359 of 2005 are taken up together today.

3. Mr Mangukiya, learned advocate appearing for the petitioner has submitted that it was not open to the respondent no.3 in the first instance to pass the impugned order dismissing the petitioner from service as this Court(Coram : D.N Patel, J.) vide order dated 21.12.04 in Criminal Appeal No. 2197/04 had suspended the very conviction itself. Thus, when the conviction itself was suspended it was not open to the respondent no.3 to pass the impugned order on the ground that the judgement rendered by the competent court had not been stayed.

3.1 Mr Mangukiya has also relied upon the provisions of the circular dated 05.08.03 wherein the State has categorically laid down the procedure to be followed in respect of taking up proceedings against the convicted employees in Gujarat State Services (Disciplinary) Appeal Rules, 1971. Even as per the provisions of this circular it was incumbent upon the respondent no.3 to issue notice to the petitioner before imposing punishment even on the

ground of his conviction in the criminal proceedings.

3.2 He has further submitted that the co-accused whose appeal was also heard alongwith his appeal has been reinstated as his appeal has also been accepted. The State has not taken any action so far as his case is concerned. Mr Mangukiya has submitted that in any event now as the conviction has been set aside by this Court the order of dismissal impugned in the present petition which was solely based upon his conviction deserves to be quashed and set aside.

4. Ms Bhavika Kotecha, learned AGP appearing for the respondent State could not resist this petition in absence of any reply controverting the averments made in this petition.

5. This Court had heard counsel for the parties at length and perused the documents on record. The perusal of the order impugned go to show that the order of dismissal is essentially base upon the findings of the criminal court in Special Case (ACB) No. 01/04 dated 18.12.04. The respondent no.3 has taken into consideration the fact that when the petitioner was convicted for offence punishable under sections 7 and 13(2) of the Prevention of Corruption Act, 1988 he was not fit to be retained in service and was found guilty by

the competent court and therefore the appropriate punishment of dismissal was imposed. Now as per the findings of this Court in Criminal Appeal No. 2197/04 the petitioner has been acquitted and the order of conviction and sentence has been set aside. Thus it can be said that the very basis for dismissal order is now no more existing and therefore the order of dismissal cannot be sustained.

6. It also deserves to be noted that the contention of Mr Mangukiya that the co-accused who was also convicted by the competent court in Criminal Case No. 01/01 who had preferred Criminal Appeal being Criminal Appeal No. 2199/04 has been reinstated by this very authority on his being acquitted vide judgement dated 28.02.07 passed by this Court. The same treatment ought to have been accorded to the present petitioner also. It also deserves to be noted that the order impugned in this petition clearly indicates that the notice which is envisaged in circular dated 05.08.03 had never been issued to the petitioner and therefore it can well be said that the order impugned in this petition is concerned, suffers from non-compliance of the directives of the State contained in such circular dated 05.08.03. Thus even on this count also the impugned order of dismissal deserves to be quashed and set aside.

7. In the result, the impugned order dated 24.01.05 terminating the services of the petitioner is quashed and set aside. The respondents are directed to reinstate the petitioner on his original post with all the consequential benefits within a period of one month from the date of receipt of the writ of this Court. It is also directed that the petitioner shall be paid all the consequential benefits as admissible under the law within a period of three months from the date of receipt of the writ of this Court. Rule is made absolute accordingly.

8. In view of the order passed in Special Civil Application, the Civil Application shall not survive. Civil Application therefore stands disposed of accordingly.

9. Direct service is permitted.

(S.R.BRAHMBHATT, J.)

Divya//